

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-217501

**DATE:** March 12, 1986

**MATTER OF:** Mary Ellen Casco

**DIGEST:** An employee received a quality step increase in her GS-5 position subsequent to actions denying her a promotion to GS-6 for which she successfully brought a discrimination complaint. In determining her backpay entitlement incident to retroactive promotion to GS-6, the quality step increase she earned in the lower grade position may not be treated as if it had been awarded in the higher grade position to which she was retroactively promoted.

We have been asked to determine the effect of a quality step increase on the pay of an employee who received a retroactive promotion pursuant to a discrimination complaint effective prior to the date she received a quality step increase in her lower grade position. Since the quality step increase could not have been awarded if she had been promoted as of the date the discriminatory action took place, it may not be considered in establishing her rate of pay in the higher grade position. Amounts she received in the lower grade position as a result of the quality step increase are to be set off against the salary of the higher grade position in determining the amount of her backpay award.

Ms. Mary Ellen Casco, while a secretary, grade GS-5, step 7, in the Denver Regional Office, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, received a quality step increase to step 8 of grade GS-5, effective April 5, 1983. This quality step increase was predicated upon work she performed after January 24, 1982, in the secretarial position. However, at the time she received the quality step increase, Ms. Casco had filed an equal employment opportunity complaint concerning the selection of another employee to fill a loan management technician position at grade GS-6. On September 18, 1984, the complaint was decided in Ms. Casco's favor resulting in her promotion to the grade GS-6 position and entitlement to backpay for that grade effective February 6, 1983, the date of the original selection for the loan management technician position.

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On February 6, 1983, Ms. Casco was serving in grade GS-5, step 7, at \$16,045 per year. If she had not been discriminated against she would have been promoted to grade GS-6 on that date and she would have been entitled to an increase equal to two within-grade step increases in grade GS-5 or at least \$16,937, the salary applicable to GS-5, step 9. See 5 U.S.C. § 5334(b). This would have entitled her to backpay in grade GS-6 at the step 6 rate of \$17,386 (the step 5 rate being \$16,889 or less than the two-step entitlement). The agency asks whether Ms. Casco is entitled to backpay based on the salary for GS-6, step 6, or whether her backpay entitlement is to be based on that salary plus an amount representing the quality step increase she received effective April 5, 1983.

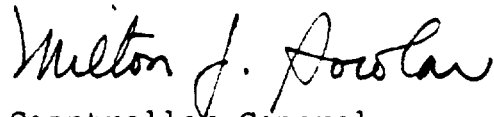
Authority to grant a step increase in recognition of high quality performance is found in 5 U.S.C. § 5336. In accordance with 5 C.F.R. § 531.504, the employee must perform the duties of his or her position at a level that substantially exceeds the performance required to establish an acceptable level of competence. Minimum criteria for granting a quality step increase are set forth in Federal Personnel Manual Supplement 990-2, Book 531, Subchapter S5-6. These include a determination that the employee will continue to serve in the position for which the higher quality performance is recognized, or in a similar position at the same grade level. Based on these standards, Ms. Casco would not and could not have been granted the quality step increase if she had not been discriminated against and had been promoted to the GS-6 loan management technician position on February 6, 1983.

An employee who is entitled to backpay may not be awarded more than he or she would have received if the erroneous personnel action had not occurred. 5 C.F.R. § 550.805(b). For this reason, Ms. Casco's pay in the higher grade position to which she was retroactively promoted is to be based on the rate for GS-6, step 6 and the quality step increase she was granted in the GS-5 position may not be taken into account to give her any additional pay in the GS-6 position. This result is consistent with our holdings in John J. Kelly, B-204724, September 13, 1982, and Lawrence J. Ponce, B-192684, November 19, 1979, both involving employees who were awarded quality step increases during periods for which they subsequently were

awarded retroactive temporary promotions to higher grade positions based on details to these positions. In both cases, the quality step increases became vested and were given effect in the lower grade positions in which they were earned and to which the employees returned upon termination of the details. They were not given effect in the higher grade positions to which the employees were temporarily promoted.

The backpay treatment of a quality step increase is to be distinguished from the treatment of cash awards which may be granted for performance accomplishments while the individual was a Government employee. In Ladorn Creighton, 62 Comp. Gen. 343 (1983), we held that cash awards of this nature should not be set off against backpay. Because a cash award such as that involved in the Creighton case could have been granted without regard to the employee's continued performance in the lower grade position, that holding has the practical effect of treating the cash award as if it had been earned in the higher grade position.

Since Ms. Casco could not have been awarded the quality step increase here involved in her GS-6 position, this quality step increase can only be given effect in the GS-5 position in which it was earned. In determining the amount of her backpay award, the compensation attributable to the quality step increase, along with the GS-5 salary she actually received, is to be set off against her GS-6, step 6 salary in the higher grade position.



Acting Comptroller General  
of the United States